

(ORDINANCE AS AMENDED NO. 3)  
ORDINANCE NO. \_\_\_\_\_

1           AN ORDINANCE amending Title 8 of the Lincoln Municipal Code relating to  
2   Health and Sanitation by creating a new Chapter 8.48 entitled the Lincoln Smokefree Air Act  
3   by adding a new section numbered 8.48.010 to set forth the title of the Chapter; adding a new  
4   section numbered 8.48.020 to set forth the purpose of the Chapter; adding a new section  
5   numbered 8.48.030 to set forth general provisions regarding definitions used in the Chapter;  
6   adding new sections numbered 8.48.035 through 8.48.155 to provide definitions for bar,  
7   employed, employee, employer, guestroom or suite, health director, indoor area, international  
8   no-smoking symbol, place of employment, proprietor, public place, smoking room, smoke or  
9   smoking, smoke shop, respectively; adding a new section numbered 8.48.160 to make it  
10   unlawful for any person to smoke in a place of employment or a public place and to provide  
11   exceptions therefor; adding a new section numbered 8.48.170 to make it unlawful for a  
12   proprietor of any place regulated by this chapter to allow smoking in any place of employment  
13   or public place and providing exceptions therefor; adding a new section numbered 8.48.180  
14   to require the posting of signs; adding a new section numbered 8.48.190 to provide for the  
15   enforcement of the provisions of the chapter; adding a new section 8.48.200 to provide  
16   penalties for violations of the chapter; adding a new section numbered 8.48.210 to provide  
17   for severability of the chapter; and providing that this ordinance shall become effective July  
18   1, 2005.

19           BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

1                   Section 1. That Title 8 of the Lincoln Municipal Code be amended by adding  
2 a new section numbered 8.48.010 to read as follows:

3     **8.48.010     Title.**

4                   This Chapter shall be known as the Lincoln Smokefree Air Act.

5                   Section 2. That Title 8 of the Lincoln Municipal Code be amended by adding  
6 a new section numbered 8.48.020 to read as follows:

7     **8.48.020     Purpose.**

8                   The City Council does hereby find and declare that the purpose of this Chapter is to  
9 protect the health and welfare of employees and the public by requiring nonsmoking and  
10 smoking areas to be separated in all places of employment and public places.

11                   It is therefore declared to be the public policy of this City to encourage places of  
12 employment and public places to eliminate and prevent the health and safety risks posed by  
13 smoking at places of employment and public places. The City Council authorizes the Health  
14 Director of the Lincoln-Lancaster County Health Department and law enforcement to  
15 administer and enforce this Chapter within the City of Lincoln.

16                   Section 3. That Title 8 of the Lincoln Municipal Code be amended by adding  
17 a new section numbered 8.48.030 to read as follows:

18     **8.48.030     Definitions; General Provisions.**

19                   For the purposes of this Chapter, the following words and phrases shall have the  
20 meaning ascribed to them by this Chapter.

21                   Section 3.3 That Title 8 of the Lincoln Municipal Code be amended by adding  
22 a new section numbered 8.48.033 to read as follows:

1     **8.48.033**     **Definition; Bar.**

2             Bar shall mean any indoor area serving as a place of employment or a public place  
3     licensed for the sale and service of alcoholic beverages for on-premises consumption and  
4     where gross receipts from the sale and service of food constitute less than sixty percent (60%)  
5     of gross receipts from all business activity conducted on the premises.

6             Section 4. That Title 8 of the Lincoln Municipal Code be amended by adding  
7     a new section numbered 8.48.040 to read as follows:

8     **8.48.040**     **Definition; Employed.**

9             Employed shall mean hired, contracted, subcontracted, or otherwise engaged to furnish  
10    goods or services.

11            Section 5. That Title 8 of the Lincoln Municipal Code be amended by adding  
12    a new section numbered 8.48.050 to read as follows:

13    **8.48.050**     **Definition; Employee.**

14            Employee shall mean a person who is employed by an employer in consideration for  
15    direct or indirect monetary wage(s), profit, or other remuneration.

16            Section 6. That Title 8 of the Lincoln Municipal Code be amended by adding  
17    a new section numbered 8.48.060 to read as follows:

18    **8.48.060**     **Definition; Employer.**

19            Employer shall mean a person, nonprofit entity, sole proprietorship, partnership, joint  
20    venture, corporation, limited partnership, limited liability company, co-op, firm, trust,  
21    association, organization, or other business entity formed for profit-making purposes, including  
22    retail establishments where goods or services are sold, who employs one or more employees.

1                   Section 7. That Title 8 of the Lincoln Municipal Code be amended by adding  
2 a new section numbered 8.48.070 to read as follows:

3     **8.48.070       Definition; Guestroom or Suite.**

4                   Guestroom or suite shall mean sleeping rooms and directly associated private areas,  
5 such as bathrooms, living rooms, and kitchen areas, if any, rented to the public for their  
6 exclusive transient occupancy including, but not limited to guestrooms or suites in hotels,  
7 motels, inns, lodges, or other such establishments.

8                   Section 8. That Title 8 of the Lincoln Municipal Code be amended by adding  
9 a new section numbered 8.48.080 to read as follows:

10    **8.48.080       Definition; Health Director.**

11                  Health Director shall mean the Director of the Lincoln-Lancaster County Health  
12 Department or authorized representative(s).

13                  Section 9. That Title 8 of the Lincoln Municipal Code be amended by adding  
14 a new section numbered 8.48.090 to read as follows:

15    **8.48.090       Definition; Indoor Area.**

16                  Indoor area shall mean the area bordered on all sides by a floor to ceiling wall is  
17 continuous and solid except for closeable entry/exit doors and windows.

18                  Section 10. That Title 8 of the Lincoln Municipal Code be amended by adding  
19 a new section numbered 8.48.100 to read as follows:

20    **8.48.100       Definition; International No-Smoking Symbol.**

21                  International no-smoking symbol shall mean a pictorial representation of a burning  
22 cigarette enclosed in a red circle with a red bar across it.

1                   Section 11. That Title 8 of the Lincoln Municipal Code be amended by adding  
2 a new section numbered 8.48.110 to read as follows:

3     **8.48.110       Definition; Place of Employment.**

4             Place of employment shall mean an indoor area under the control of a proprietor that  
5 an employee accesses as part of the course of employment without regard to whether work  
6 is occurring at any given time. The indoor area shall include, but is not limited to, work areas,  
7 employee breakrooms, restrooms, conference rooms, meeting rooms, classrooms, employee  
8 cafeterias, and hallways. A private residence shall not be considered a “place of employ-  
9 ment”.

10            Section 12. That Title 8 of the Lincoln Municipal Code be amended by adding  
11 a new section numbered 8.48.120 to read as follows:

12     **8.48.120       Definition; Proprietor.**

13            Proprietor shall mean any employer, owner, operator, supervisor, manager or any other  
14 person who controls, governs, or directs the activities in a place of employment or public  
15 place.

16            Section 13. That Title 8 of the Lincoln Municipal Code be amended by  
17 adding a new section numbered 8.48.130 to read as follows:

18     **8.48.130       Definition; Public Place.**

19            Public Place shall mean an indoor area to which the public is invited or in which the  
20 public is permitted, whether or not the public is always invited or permitted. A private  
21 residence shall not be considered a “public place”.

22            Section 14. That Title 8 of the Lincoln Municipal Code be amended by adding  
a new section numbered 8.48.140 to read as follows:

1     **8.48.140     Definition; Smoking Room.**

2             Smoking room shall mean a room designated by a proprietor pursuant to Section  
3     8.48.170(4) within a place of employment or public place where smoking may be allowed.

4             Section 15. That Title 8 of the Lincoln Municipal Code be amended by adding  
5     a new section numbered 8.48.150 to read as follows:

6     **8.48.150     Definition; Smoke or Smoking.**

7             Smoke or smoking shall mean the lighting of any cigarette, cigar, or pipe; or the  
8     possession of any lighted cigarette, cigar, or pipe, regardless of its composition.

9             Section 15.5 That Title 8 of the Lincoln Municipal Code be amended by adding  
10    a new section numbered 8.48.155 to read as follows:

11    **8.48.155     Definition; Smoke Shop.**

12            Smoke shop shall mean any place of employment or public place devoted primarily  
13    to the sale of tobacco products and/or smoking accessories.

14            Section 16. That Title 8 of the Lincoln Municipal Code be amended by adding  
15    a new section numbered 8.48.160 to read as follows:

16    **8.48.160     Smoking Prohibited; Exceptions.**

17            It shall be unlawful for any person to smoke in a place of employment or a public  
18    place, except as designated by a proprietor pursuant to Section 8.48.170.

19            Section 17. That Title 8 of the Lincoln Municipal Code be amended by adding  
20    a new section numbered 8.48.170 to read as follows:

21    **8.48.170     Proprietor to Prohibit Smoking; Exceptions.**

1           (a)     It shall be unlawful for a proprietor of any place regulated by this Chapter to  
2 allow smoking in any place of employment or public place, except as follows:

3           (1)     In guestrooms or suites may be designated as an indoor area where  
4 smoking is allowed, however, the number of rooms or suites designated for smoking must be  
5 reasonably proportionate to the preference of the users.

6           (2)     At times when a scientific or analytical laboratory, governed by state or  
7 federal law, or a laboratory at a college or university approved by the Nebraska Coordinating  
8 Commission for Post Secondary Education, is conducting research into the health effects of  
9 smoking, smoking may be allowed as part of the study.

10          (3)     In an employee breakroom that has been designated as an indoor area  
11 where smoking is allowed ("smoking breakroom") by employees, provided that the following  
12 requirements are met:

13           (i)     Only employees of the proprietor shall be allowed to smoke  
14 within the smoking breakroom; and

15           (ii)    An employee breakroom designated for nonsmoking  
16 ("nonsmoking breakroom") shall be provided. It shall have at least the same size and  
17 amenities as the smoking breakroom; and

18           (iii)   The smoking breakroom shall not serve as a work area for any  
19 employee and no employee shall be required to enter the smoking breakroom in order to  
20 reach the employee's work area. This prohibition shall not apply to employees providing  
21 janitorial and maintenance services within the smoking breakroom; and

1                   (iv)    The smoking breakroom shall be separated from the rest of the  
2 place of employment or public place, and from any other adjacent or connected place of  
3 employment or public place, by solid walls, floors, ceiling, and doors equipped with  
4 automatic closing mechanisms; and

5                   (v)    The smoking breakroom shall be at negative air pressure with  
6 respect to the rest of the place of employment or public place, and from any other adjacent  
7 or connected place of employment or public place, so as to prohibit the flow of air from the  
8 smoking breakroom into the place of employment or public place; and

9                   (vi)   The smoking breakroom's air shall be immediately exhausted to  
10 the outside of the building by an exhaust fan rather than being recirculated within the smoking  
11 breakroom or any place of employment or public place; and

12                  (vii)   No person under the age of eighteen shall be allowed to enter the  
13 smoking breakroom.

14                  (4)    In a single smoking room within any place of employment or public  
15 place, provided that it meets the following requirements:

16                   (i)    The smoking room shall be separated from the rest of the place  
17 of employment or public place, from any other adjacent or connected place of employment  
18 or public place, by solid walls, floors, ceiling, and doors equipped with automatic closing  
19 mechanisms; and

20                   (ii)   The smoking room shall be at negative pressure with respect to  
21 any adjacent or connected place of employment or public place to prohibit the flow of air



1 from the smoking room into the nonsmoking portion of the place of employment or public  
2 place; and

3 (iii) The smoking room's air shall be immediately exhausted to the  
4 outside of the building by an exhaust fan rather than being recirculated within the smoking  
5 room or any place of employment or public place; and

6 (iv) The maximum size of the smoking room shall be reasonably  
7 proportionate to the preference of the users of the place of employment or public place; and

8 (v) Any service or amenity which the place of employment or public  
9 place chooses to provide to the public or employees within the smoking room shall also be  
10 available to the public or employees in the rest of the place of employment or public place.  
11 Service or amenity shall include, but is not limited to television, musical entertainment, and  
12 seating; and

13 (vi) No member of the public nor any employee shall be required to  
14 enter the smoking room in order to access common areas of the place of employment or  
15 public place, including but not limited to, hallways, restrooms, lobbies, and waiting rooms;  
16 and

17 (vii) No person under the age of eighteen shall be allowed to enter the  
18 smoking room.

19 (5) Smoking by an actor or actress as part of the character role in a theatrical  
20 production, if smoking is an integral part of the story.

21 (6) In a smoke shop, provided that it meets the following requirements:

1                   (i)     The smoke shop shall be separated from any other place of  
2 employment or public place by solid walls, floors, ceiling, and doors equipped with automatic  
3 closing mechanisms; and

4                   (ii)    The smoke shop shall be at negative pressure with respect to any  
5 adjacent or connected place of employment or public place to prohibit the flow of air from  
6 the smoke shop into another place of employment or public place; and

7                   (iii)   The smoke shop are shall be immediately exhausted to the outside  
8 of the building by an exhaust fan rather than being recirculated within the smoke shop; and

9                   (iv)    No person under the age of eighteen shall be allowed to enter  
10 the smoke shop; and

11                  (v)     The smoke shop shall not sell or serve alcoholic beverages.

12                  (7)     In a bar, provided that it meets the following requirements:

13                       (i)     The licensed manager of the bar shall have placed on file in the  
14 office of the City Clerk an affidavit verifying that the gross receipts from the sale and service  
15 of food constitute less than 60% of gross receipts from all business activity conducted on the  
16 premises. If the proprietor of the bar is a different person than the licensed manager, the  
17 proprietor shall also have the duty to file the same affidavit; and

18                       (ii)    The affidavit(s) shall be renewed at least annually, upon the earlier  
19 of the filing of an application for renewal of the liquor license for the bar, or the filing of an  
20 application for designation of a new manager for the bar; and

21                       (iii)   There shall be no employees on the premises under the age of  
22 eighteen and all employees, regardless of age shall have been informed of the fact that

1 smoking is permitted on the premises and that the employee will be exposed to the health  
2 risks associated with smoking whether or not the employee smokes.

3 (b) The proprietor shall have an affirmative defense to any violation of this section  
4 if the proprietor (1) verbally requested a person to refrain from smoking within a public place  
5 or place of employment where smoking is prohibited; and (2) took every reasonable step to  
6 prohibit the person from smoking. "Reasonable step" shall not require the physical ejection  
7 of a person by the proprietor from the place of employment or public place.

8 (c) This Chapter shall not be interpreted or construed to permit smoking where  
9 smoking is otherwise restricted by other applicable laws.

10 Section 18. That Title 8 of the Lincoln Municipal Code be amended by adding  
11 a new section numbered 8.48.180 to read as follows:

12 **8.48.180 Signs Required; Requirements.**

13 (a) If smoking is not allowed by this Chapter and/or by the proprietor, the proprietor  
14 shall post at least one sign at all entrances of the place of employment or public place used  
15 by employee(s) or the public containing only the international no smoking symbol or only the  
16 words "no smoking," or only the words "no smoking under penalty of law."

17 (b) If smoking is allowed in conformance with this Chapter and by the proprietor,  
18 the proprietor shall post at least one sign at all entrances of the place of employment or public  
19 place used by employee(s) or the public containing only the words "no smoking except in  
20 designated area under penalty of law," and:

1           (1) Each guestroom or suite designated as an indoor area where smoking is  
2 allowed shall have a sign posted which indicates smoking is allowed within the guestroom  
3 or suite. The sign shall include the words "smoking allowed." Each letter shall be one inch  
4 or larger in size. There shall be a separately posted sign on each entrance of the guestroom  
5 or suite.

6           (2) Each indoor area where research is being conducted, pursuant to Section  
7 8.48.170(2), that requires a person to smoke, shall have a temporary sign posted on all  
8 entrances used by employee(s) or the public indicating that smoking is being allowed for the  
9 purposes of the research.

10           (3) Each smoking breakroom, designated pursuant to Section 8.48.170(3),  
11 and each smoking room designated, pursuant of Section 8.48.170(4) shall have a sign posted  
12 indicating that smoking is allowed within the smoking breakroom or smoking room. The signs  
13 shall include the words "smoking allowed." Each letter shall be one inch or larger in size.  
14 There shall be a separately posted sign on each entrance to the smoking breakroom or  
15 smoking room.

16           (c) Proprietors shall conspicuously post or display required signs so that the signs  
17 are readily viewable by employee(s) and the public.

18           Section 19. That Title 8 of the Lincoln Municipal Code be amended by adding  
19 a new section numbered 8.48.190 to read as follows:

1     **8.48.190     Enforcement.**

2             The Health Director and law enforcement agencies are hereby authorized to inspect  
3     a place of employment or public place at any reasonable time to determine compliance with  
4     this Chapter.

5             Section 20. That Title 8 of the Lincoln Municipal Code be amended by adding  
6     a new section numbered 8.48.200 to read as follows:

7     **8.48.200     Violations and Penalties.**

8             (a)     A person who smokes in a place of employment or a public place in violation  
9     of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be  
10    punished by a fine of up to five hundred dollars (\$500) together with costs and/or up to six (6)  
11    months in jail with:

12            (1)     A minimum fine of one hundred dollars (\$100) and costs for the first  
13    offense.

14            (2)     A minimum fine of two hundred dollars (\$200) and costs for the second  
15    offense.

16            (3)     A minimum fine of five hundred dollars (\$500) and costs for the third and  
17    subsequent offenses.

18            (b)     A proprietor of a place of employment or public place upon whom a duty is  
19    placed by the provisions of this Chapter, who shall fail, neglect, or refuse to perform such  
20    duty, or who shall knowingly violate any of the provisions hereof, shall be deemed guilty of  
21    a misdemeanor, and upon conviction thereof, shall be punished by a fine of up to five  
22    hundred dollars (\$500) together with costs and/or up to six (6) months in jail with:

1                   (1)     A minimum fine of one hundred dollars (\$100) and costs for the first  
2     offense.

3                   (2)     A minimum fine of two hundred dollars (\$200) and costs for the second  
4     offense.

5                   (3)     A minimum fine of five hundred dollars (\$500) and costs for the third and  
6     subsequent offenses.

7                 (c)     Each individual violation and each day that the violation continues to exist shall  
8     constitute a separate and distinct offense and shall be punishable as such.

9                 (d)     Every act or omission of whatsoever nature constituting a violation of any of the  
10     provisions of this Chapter by an officer, manager, supervisor, agent, or employee of any  
11     proprietor, if said act or omission is made with the authorization, knowledge, or approval of  
12     the proprietor, shall be deemed and held to be the act or omission of such proprietor, and said  
13     proprietor shall be punishable in the same manner as if said act or omission had been  
14     committed by such proprietor personally.

15                (e)     The violations of any of the provisions of this Chapter by a proprietor shall be  
16     cause sufficient to justify the revocation or suspension of any permit or license that the  
17     proprietor has received from the City of Lincoln for the place of employment or public place.  
18     Such revocation or suspension shall be cumulative with the penalty imposed by this Chapter,  
19     any other ordinance of the City of Lincoln, and any other penalty or remedial consequence  
20     imposed by law.

21                         Section 21. That Title 8 of the Lincoln Municipal Code be amended by adding  
22     a new section numbered 8.48.210 to read as follows:

1     **8.48.210     Severability.**

2             Each section and subsection of this Chapter is hereby declared to be independent of  
3 every other section or subsection of this Chapter and invalidity of any section or subsection  
4 of this Chapter shall not invalidate any other section or subsection thereof.

5             Section 22. That Sections 1 through 21 hereof be codified in the Lincoln  
6 Municipal Code as Chapter 8.48, the Lincoln Smokefree Air Act.

7             Section 23. That the operative date of this ordinance shall be July 1, 2005.

8             Section 24. That this ordinance shall take effect and be in force from and after  
9 its passage and publication according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_\_ day of \_\_\_\_\_, 2004:

\_\_\_\_\_  
Mayor